

## **FINAL RECOMMENDATIONS OF THE APFO WORK GROUP**

October 24, 2008

(Including revisions discussed at 10/27/08 Task Force meeting)

1. The General Assembly should consider amending Article 66-B to:
  - a) Require a local government that has an Adequate Public Facilities Ordinance (APFO) to annually report to MDP by July 1 if the APFO results in an APFO restriction, moratorium, or capacity problem within a PFA. That report shall include the location of the restriction, type of infrastructure involved, and the estimated time for the resolution of restriction.
  - b) Require MDP to prepare and publish a report every two years identifying geographic areas and facilities within PFAs that do not meet local APFO standards, and any improvements to those facilities that have been scheduled and/or proposed in the jurisdiction's Capital Improvement Program.
2. Jurisdictions should consider waiving APFO restrictions for workforce housing, affordable housing, and infill and revitalization projects within the PFA. It is noted that some jurisdictions already have waivers for these types of development. The final determination of waiver should be left to the local government.
3. The State of Maryland should identify new funding sources to be used for infrastructure improvements within PFAs. State funding decisions should give high priority to infrastructure projects that remove reasonable APFO restrictions, moratoria, or other capacity problems that stop or limit development within PFAs or reimburse local governments for forward funding of these projects.
4. The State should consider new sources of revenue to pay for State-funded infrastructure. The Task Force recommends consideration be given to the following: an increase in the gas tax, indexing the gas tax to inflation, and a tax on vehicle miles travelled (VMT). Should any of these be adopted, it is imperative that the proceeds be dedicated exclusively to infrastructure. (Please note that MACO cannot endorse a VMT tax.)
5. The State should provide counties and municipalities with the broadest possible authority for funding local infrastructure projects, including authority to use any reasonable tax, revenue source or financing vehicle. The decision to use a particular tax or funding vehicle should rest with local government. A list of revenue sources and financing vehicles that should be made available to local governments can be found at Appendix A.
6. Article 66B §11.01 should be amended to authorize local governments to establish a transfer of development rights program to facilitate the purchase of

land for a school or other public facility within a PFA. Under this approach, the pre-existing development rights associated with property selected to become a school or other public facility could be sold to a third party, who would use those development rights to obtain increased density on land elsewhere within the community served by the school or public facility. Proceeds of the sale of development rights would be used to help purchase the public site and/or construct the facility. (Article 66B §11.01 currently provides that "a local legislative body that exercises authority granted by this article may establish a program for the transfer of development rights to: (1) Encourage the preservation of natural resources; and (2) Facilitate orderly growth and development in the State.")

7. Voluntary communication and cooperation among the counties, municipalities, and their local boards of education should be encouraged, especially with respect to growth and capacity issues. A county and local board of education should meet at least twice a year to discuss how the county and board will handle growth issues related to school capacity, student growth projections, and where possible, the siting of school facilities in a manner consistent with sound land use and public facilities planning.

8. OPTION A: Because of their unique role in providing for the education of children, schools were not subject to PFA spending requirements under the 1997 Planning Act. The State, in conjunction with the counties and local boards of education, should study the advantages and drawbacks of making school construction decisions subject to PFA review in the same way that other State spending decisions are made.

8. OPTION B: Amend the 1992 Planning Act and 1997 Smart Growth and Neighborhood Conservation Act to make school construction decisions subject to PFA review in the same way that state spending decisions on water and sewer and transportation infrastructure are. This would restrict funding of school capacity projects that are not located within priority funding areas with an exception process through the Board of Public Works. ( Will require amending § 5B-7B-07 of the State Finance and Procurement Law.)

- PFA review should be restricted to projects that increase student seating capacity. PFA review would be applied to:
  - a. New schools;
  - b. Replacement schools that increase capacity above the capacity of the demolished or abandoned facility;
  - c. Additions that are only for capacity purposes, and not for the two purposes described in c. below.
- PFA review should not be applied to:
  - a. Renovation of existing facilities, when no new capacity is added (this would include full renovation, limited renovation, and systemic renovation categories of work);

- b. Replacement projects that do not increase capacity, e.g. a replacement at the same State Rated Capacity as the demolished facility;
    - c. Projects that increase capacity but serve either of these two educational objectives:
      - i. Additions for full-day kindergarten or for pre-kindergarten for economically disadvantaged children, in fulfillment of the requirements of the Bridge to Excellence in Education Act of 2002.
      - ii. Additions to provide high school science facilities, when renovation of existing space is not an option due to technical constraints.
  - Standards should be set for exceptional circumstances that could be presented by a school system to allow a capacity project to be built outside of a PFA. As with transportation and water and sewer projects, an exception to fund a school capacity project outside a PFA would require Board of Public Works approval
  - Standards could include (among others to be developed):
    - a. All other means of satisfying the educational need have been explored and have been found to be either unavailable or impracticable;
    - b. The exception will serve the public interest in other ways (e.g.: the site outside the PFA allows for joint-use opportunities with the recreation or parks department that would not be available with the sites within the PFA.)
- 8.
9. The State should adopt a 6-year CIP for school construction to give localities more predictability in funding.
10. The State should work to increase the quality and quantity of demographic information available to school boards to better project trends in student population. Officials should use student generation rates based on actual experience and consider geographical differences. Officials at all levels should cooperate on strategies to increase enrollment at schools that are under capacity.
11. MDP should prepare a study on the practicality of building vertical "urban" schools in the more densely built areas of PFAs. The study should also consider the practicality of making schools part of a mixed use or transit oriented development project and co-location of public facilities.
12. Coordination among county and municipal land use authorities should be strongly encouraged. Coordination has improved significantly in recent years. The General Assembly legislated in this area recently via H.B. 1141, and should not legislate further at this time, but rather allow local governments to gain more experience with the current approach.

